

DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS 2 NAVY ANNEX WASHINGTON DC 20370-5100

SMC

Docket No: 04828-99 22 November 1999





This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552. You requested removal of all reference to a nonjudicial punishment (NJP) of 8 April 1998 which has been set aside, to include an evaluation report and counseling record for 16 September 1997 to 30 April 1998.

The enclosed memorandum dated 19 November 1999 shows the Navy Personnel Command (NPC) has amended the contested evaluation by removing from block 43 the following references to your NJP: "and subsequent NJP" (third line) and "Awarded CO's [commanding officer's] NJP on 8 Apr 98." (end of fifth line).

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 10 November 1999. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinion furnished by NPC dated 22 October 1999, a copy of which is attached.

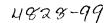
After careful and conscientious consideration of the entire record, and notwithstanding the recommendation of the advisory opinion for complete removal of the contested evaluation, the Board found that the evidence submitted was insufficient to establish probable material error or injustice warranting this relief. In this connection, they particularly noted that the set aside authority's letter dated 17 July 1999 shows the set aside was not based on the determination you had not committed misconduct, but on the premise that you should not have been punished twice for the same actions. In view of the above, your application for relief beyond that effected by NPC has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER Executive Director

Enclosure





DEPARTMENT OF THE NAVY 5720 INTEGRITY DRIVE MILLINGTON TN 38055-0000

5420 PERS 313D1/2146 19 Nov 99

MEMORANDUM FOR BOARD FOR CORRECTION OF NAVAL RECORDS

CORRECTION TO THE PERMANENT RECORD 520-90-8134

Ref:

(a) PHONECON BCNR and Market

10 Nov 99

(b) Memorandum to File for Docket No.

Encl: (1) Removed image

(2) Corrected record

- 1. As requested by reference (a) and (b), member's record has been corrected.
- 2. Enclosures (1) and (2) are forwarded.

Asst Head, Records Control & Quality Assurance Section

4828-99

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DEPARTMENT OF THE NAVY

NAVY PERSONNEL COMMAND 5720 INTEGRITY DRIVE MILLINGTON TN 38055-0000

1610 PERS-311 22 OCT 99

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF NAVAL RECORDS

Via: PERS/BCNR Coordinator (PERS-00XCB)

Subj: AT JSN, 520-90-8134

Ref: (a) BUPERSINST 1610.10, EVAL Manual

Encl: (1) BCNR File

1. Enclosure (1) is returned. The member requests removal of the report for the period 16 September 1997 to 30 April 1998.

- 2. Based on our review of the material provided, we find the following:
- a. A review of the member's digitized record revealed the report in question to be on file. The member signed the report indicating his desire not to submit a statement. Per reference (a), Annex S, paragraph S-8, the member has two years from the ending date of the report to submit a statement if desired. PERS-311 has not received a statement from the member.
- b. The report in question was prepared upon the withdrawal of the member's promotion recommendation as required by reference (a), Annex D, paragraph D-9.d and Annex Q, paragraph Q-2.c, due to the member being awarded Non Judicial Punishment (NJP).
- c. The member provides with his petition documentation of his NJP of 8 April 1998 being set-aside on 17 July 1999. Per reference (a), Annex N, paragraph N-13, the comments contained in the report are now inappropriate. As all of the member's rights and privileges have been restored, we feel this report is now inappropriate.
 - d. The member proves the report to be unjust or in error.
- 3. We recommend removal of the report in question, replacing it with a SECNAV memo to maintain report continuity.

Head, Performance Evaluation Branch